

AMENDMENT

U.S. Appln. No. 09/830,876

REMARKS

Claims 1-22 were pending in the application. Applicants herein cancel Claims 2 and 15-22, and add new Claims 23-30. Accordingly, Claims 1, 3-14 and 23-30 are now pending.

Support for amended Claim 1 can be found, *inter alia*, in original Claims 1 and 2.

Support for amended Claims 3-14 can be found, *inter alia*, in the corresponding original claims. Additional support for amended Claim 14 can be found at page 7, lines 15-22 of the present specification.

Support for new Claim 23 can be found, *inter alia*, at page 7, line 13 of the present specification.

Support for new Claim 24 can found, *inter alia*, at page 7, line 14 of the present specification.

Support for new Claim 25 can be found, *inter alia*, in original Claims 1 and 15 and at page 7, lines 9-14 and the examples at pages 22-28 of the present specification, wherein immunoassay results between sprouted and sound wheat are compared.

Support for new Claim 26 can be found, *inter alia*, at page 7, lines 9-11 of the present specification and in original Claim 15.

Support for new Claim 27 can be found, *inter alia*, at page 7, lines 1-5 of the present specification.

Support for new Claim 28 can be found, *inter alia*, at page 7, lines 10-11 of the present specification.

AMENDMENT

U.S. Appln. No. 09/830,876

Support for new Claim 29 can be found, *inter alia*, at page 7, lines 15-22 and page 3, lines 26-28 of the present specification.

Support for new Claim 30 can be found, *inter alia*, at page 3, lines 26-28 of the present specification and in original Claims 1 and 14.

Hence, the amendments to the claims and new Claims 23-30 do not constitute new matter, and thus entry is requested.

In paragraph 1, on page 2 of the Office Action, the Examiner withdraws from consideration Claims 16-22 because there is no allowable generic or linking claim.

Without conceding the correctness of the Examiner's position, Applicants hereby cancel Claims 16-22 without prejudice to the filing of a Divisional Application thereon.

Further, in paragraph 2, on page 2 of the Office Action, the Examiner acknowledges Applicants' election with traverse of the invention of Claims 1-15 on the basis that the claims are joined by the special technical feature of an antibody that binds to an epitope of α -amylase comprising one or more of the amino acid sequences of SEQ ID NOs:1, 2 and 3.

However, the Examiner contends that the traversal is not persuasive because the claims are not drawn to a single antibody which binds to an epitope of α -amylase comprising one or more of the amino acid sequences of SEQ ID NOs:1, 2 and 3, but rather the claims are directed to polyclonal antibodies and fragments thereof, monoclonal antibodies and fragments thereof, recombinant antibodies and fragments thereof or another type of binding partner that binds to SEQ ID NOs:1-3. The Examiner

AMENDMENT

U.S. Appln. No. 09/830,876

contends that the antibodies are different from another because they have different physical, chemical and binding characteristics, and therefore lack a special technical feature.

The claims recite that the antibodies bind to one or more amino acid sequences selected from the group consisting of SEQ ID NO:1, 2 and 3. Therefore, the antibodies do not substantially differ in physical, chemical and binding characteristics, contrary to the Examiner's contention. That is, to bind to these amino acid sequences, the physical/chemical structures would be similar. Thus, the antibodies do have a special technical feature in common, contrary to the Examiner's contention.

In paragraph 4, on page 2 of the Office Action, the Examiner rejects Claims 1-15 under 35 U.S.C. § 112, second paragraph.

Specifically, as to Claims 2-15, the Examiner states that the expression "An immunoassay" should be changed to "The immunoassay".

In view of the amendments to the claims, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

In addition, the Examiner states that Claim 1 is incomplete because it lacks a correlation step between the detected binding and the quality or quantity of α -amylase.

In view of the amendments to the claims, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

AMENDMENT

U.S. Appln. No. 09/830,876

The Examiner also recommends that Claim 1 be further amended to recite "wherein either of said first or second epitopes is an epitope comprising one or more [of the] amino acid sequences selected from the group consisting of...".

In view of the amendments to the claims, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

On page 3 of the Office Action, the Examiner contends that Claims 1 and 2 are indefinite with respect to the recitation of variants, i.e., it is the Examiner's position that it is unclear whether the sequence identity refers to the full-length protein or refers to sequences disclosed as SEQ ID NOs: 1, 2 and 3. In addition, the Examiner states that the term "variant" is unclear because it encompasses changes, substitutions, deletions and insertions whose meets and bounds can not be understood, and that a single mutation can eliminate the antibody's ability to bind to the altered epitopes.

In view of the amendments to the claims, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

In addition, on page 3 of the Office Action, the Examiner contends that Claim 10 is vague and indefinite with respect to the recitation "recombinant antibody fragments", i.e., the Examiner contends that the specification is silent on recombinant antibody or recombinant antibody fragments that bind to SEQ ID NOs: 1-3.

The Examiner is requested to note that recombinant antibodies are well-known to one skilled in the art and include

AMENDMENT

U.S. Appln. No. 09/830,876

chimeric or humanized antibodies, and single-chain antibodies (see page 6, lines 14 et seq.), and that such can be prepared by techniques well-known to one skilled in the art. Further, fragments would be understood by one skilled in the art to, e.g., Fab or F(ab)'₂ fragments.

However, in view of the amendments to the claims, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

Additionally, on page 3 of the Office Action, the Examiner contends that Claim 14 is indefinite because it is not clear how "suitable" is defined.

In view of the amendments to the claims, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

Moreover, on page 3 of the Office Action, the Examiner rejects Claim 15 as being confusing.

In view of the cancellation of Claim 15, Applicants submit that this aspect of the Examiner's rejection has been rendered moot.

Accordingly, Applicant respectfully submits that the pending claims clearly and definitely recite the invention of interest, and thus request withdrawal of the Examiner's rejection.

Finally, on page 3 of the Office Action, the Examiner rejects Claims 1-15 under 35 U.S.C. § 112, first paragraph.

Specifically, the Examiner contends that the expression variants showing greater than 80% or greater than 90% sequence identity to either SEQ ID NOs: 1-3 or the full-length protein lack written description.

AMENDMENT

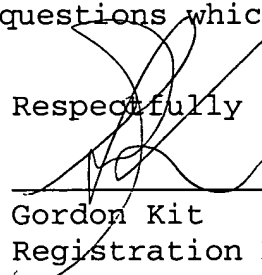
U.S. Appln. No. 09/830,876

In view of the amendments to the claims and cancellation of Claims 2, 16 and 17, Applicants submit that the Examiner's rejection has been rendered moot.

In view of the amendments to the claims and the arguments set forth above, reexamination, reconsideration and allowance are respectfully requested.

The Examiner is invited to contact the undersigned at his Washington telephone number on any questions which might arise.

Respectfully submitted,



Gordon Kit
Registration No. 30,764

SUGHRUE MION, PLLC

Telephone: (202) 293-7060

Facsimile: (202) 290-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: August 30, 2004